



February 8, 2002

Ms. Lisa B. Silvia
Office of Legal Services
Fort Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR2002-0588

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158351.

The Fort Worth Independent School District (the "district") received a request for documentation regarding allegations of the requestor's child against two specified district employees. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege and section 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that the complainant reported a possible violation of section 247.2 of title 19 of the Texas Administrative Code. However, you have failed to indicate that a violation of this law would result in a civil or criminal penalty. Because the district has not met its burden under the informer's privilege, we conclude that the district may not withhold the complainant's identity under section 552.101 in conjunction with the informer's privilege.

We next address your arguments under section 552.135 of the Government Code. Section 552.135 (formerly section 552.131)¹ provides as follows:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from the requirements of Section 552.021.
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
 - (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
 - (3) if the informer planned, initiated, or participated in the possible violation.
- (d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.
- (e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

¹ Section 552.131 of the Government Code, as added by chapter 1335, Act of the 76th Legislature, relating to certain information held by school districts, has been renumbered as section 552.135 of the Government Code. See Act of May 22, 2001, 77th Leg., R.S., ch. 1420, § 21.001(54), 2001 Tex. Sess. Law Serv. 3970, 4309 (Vernon).

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You indicate that the conduct reported to the district relates to a possible violation of a regulatory law, Principles I, III, and V of section 247.2 of title 19 of the Texas Administrative Code, regarding the educator's code of ethics. 19 T.A.C. § 247.2. Based on your argument and our review of the submitted information, we do not find that the reported conduct is a violation of any of the standards listed under Principle I, III, or V of section 247.2 of title 19 of the Texas Administrative Code. Accordingly, the district may not withhold the requested information under section 552.135 of the Government Code.

Next, we note that some of the information in the submitted documents may be excepted from required disclosure under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employees at issue here have elected not to allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the district's receipt of the present request, the district must withhold this information from required public disclosure pursuant to section 552.117. We have marked the information that must be withheld under section 552.117 if the employees timely made the election not to allow public access to the information.

Finally, we note that the submitted documents contain information that ordinarily would fall within the purview of sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Therefore, any information that identifies a student ordinarily must be withheld pursuant to FERPA and section 552.114 of the Government Code. However, we note that to the extent the information relates to the requestor's child, FERPA gives the requestor a right of access to information that identifies the requestor's child. 20 U.S.C. § 1232g. Because the requestor is the parent of the student who is identified in the submitted documents, we conclude, pursuant to FERPA, that the student identifying information is not excepted from disclosure in this instance.

In summary, the district may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with the informer's privilege or under section 552.135 of the Government Code. In addition, if the employees at issue here have elected not to allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the district's receipt of the present request, the district must withhold the employees' home addresses, telephone numbers, and social security numbers. We have marked the submitted information accordingly. The rest of the information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body


fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 158351

Enc: Marked documents

bc: Ms. Kateella Wilson
4117 Millet Avenue
Fort Worth, Texas 76105
(w/o enclosures)